Manitoba

Annual Report
1999

Residential Tenancies Commission

Includes 10% post-consumer waste

Minister of
Consumer and Corporate Affairs

Legislative Building
Winnipeg, Manitoba, CANADA
R3C 0V8

Honourable Peter M. Liba, C.M.
Lieutenant Governor of Manitoba

May It Please Your Honour:

I have the privilege of presenting for the information of your Honour, the Residential Tenancies Commission Annual Report on the administration of *The Residential Tenancies Act* for the year ending December 31, 1999.

Respectfully submitted:

Ron Lemieux

100-07608/

Manitoba

Residential Tenancies Commission

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Honourable Ron Lemieux
Minister of Consumer and Corporate Affairs
Room 314, Legislative Building
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R3C OV8

Dear Sir:

I have the honour of submitting the Residential Tenancies Commission Annual Report on the administration of The Residential Tenancies Act for the year ending December 31, 1999.

Respectfully submitted,

Alvin Zivot, Q.C.
Chief Commissioner
Residential Tenancies Commission

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INTRODUCTION

The Residential Tenancies Commission is a specialist tribunal which hears appeals from decisions and orders of the Director under The Residential Tenancies Act.

The Commission consists of:

1. The Chief Commissioner – a full-time position; appointed for a 5-year term; located in Winnipeg.

2. Deputy Commissioners – nine part-time positions; may exercise the powers and perform the duties of the Chief Commissioner; appointed for a 2-year term; from Winnipeg, Altona, Brandon and The Pas.

3. Panel members – approximately 29 panel members – half representing the views of the landlords, the others the views of the tenants; from Winnipeg, Killarney, Thompson, Dauphin, Brandon and Wawanesa.

The Commission may conduct hearings orally which includes by telephone, or in writing or partly orally and partly in writing.

Hearings are before a panel of three: one landlord representative, one tenant representative and a neutral commissioner, either the Chief Commissioner or one of the deputies.

Hearings are chaired by a neutral commissioner; the neutral commissioner also casts the deciding vote if there is a tie. Hearings outside of Winnipeg are held at the nearest judicial district.

Commission decisions are appealable to the Court of Appeal, but only on a question of error in law or jurisdiction. A Court of Appeal judge must grant leave or permission to appeal. In 1999, there were 29 applications for leave to appeal. Four applications were granted. Nineteen of the applications for leave to appeal were denied, three were withdrawn and two were delayed or discontinued for various reasons i.e. improper or incomplete documentation, or abandoned. One application for leave to appeal was still pending at the end of 1999.

The Residential Tenancies Act requires that a report on the administration of the Act be prepared at the end of each year. The reporting period for this report is the 1999 calendar year. Figures for the 1998 calendar year have also been provided for purposes of comparison and completeness. The statistics have been broken down to reflect the activities handled by each of the three offices, i.e. Winnipeg, Brandon and Thompson. The 1998 figures may vary slightly from the previous year's report due to updates and revisions made to the data as files are processed and more complete information becomes available.

APPEAL ACTIVITY SUMMARY

PARTS 1-8 OF THE RESIDENTIAL TENANCIES ACT

Parts 1-8 of The Residential Tenancies Act deal with all residential landlord and tenant matters with the exception of rent regulation. Table 1 provides a statistical summary of the activities of the Residential Tenancies Commission with regard to Parts 1-8 of the legislation. In total, 399 appeals were received at the Commission during 1999 under Parts 1 – 8 of The Residential Tenancies Act. The majority of these appeals, i.e. 221, related to decisions over security deposit claims. There were 79 appeals received to orders of possession decisions and 68 appeals received to decisions on disputes over the failure of landlords and tenants to meet their obligations under The Residential Tenancies Act. The remaining 31 appeals were related to various issues such as orders to repair, payment of utilities and notices of termination.

The Commission issued 389 decisions prior to year end. A total of 187 of these 389 decisions confirmed or upheld the Residential Tenancies Branch decisions. A total of 131 decisions were varied slightly. These variations were usually the result of the parties to an appeal submitting additional information at the appeal hearing that was not available to the Branch when it issued its decision. Thirty-five decisions of the Branch were rescinded by the Commission and 36 appeals were either rejected by the Commission or withdrawn by the appellant. Most rejections are caused by late appeals or appeals without a filing fee. Withdrawals are usually due to either: (1) the affected parties being able to reach a settlement; or (2) the appellant changing his or her mind and no longer wishing to continue with the appeal.

TABLE 1

APPEALS

STATISTICAL SUMMARY FOR MANITOBA

PARTS 1 - 8 OF THE RESIDENTIAL TENANCIES ACT

	JANUARY 1, 1998 – DECEMBER 31, 1998 (Files)	JANUARY 1, 1999 - DECEMBER 31, 1999 (Files)
SECURITY DEPOSIT		
Carried forward from previous year	43	77
Appeals Received		
Winnipeg	218	202
Brandon	12	12
Thompson	9	7
TOTAL	282	298
Decision Confirmed	85	105
Decision Varied	89	94
Decision Rescinded	12	18
Appeal Withdrawn/Rejected/Denied	19	13
ACTIVE	77	68
REPAIRS		
Carried forward from previous year	1	-
Appeals Received		
Winnipeg		
Brandon	7	14
Thompson	-	1
	-	-
TOTAL	8	15
Decision Confirmed	3	5
Decision Varied	2	5
Decision Rescinded	-	-
Appeal Withdrawn/Rejected	3	5
ACTIVE	-	-

TABLE 1

APPEALS

STATISTICAL SUMMARY FOR MANITOBA

PARTS 1 - 8 OF THE RESIDENTIAL TENANCIES ACT

	JANUARY 1, 1998 – DECEMBER 31, 1998 (Files)	JANUARY 1, 1999 - DECEMBER 31, 1999 (Files)
UTILITIES		
Carried forward from previous year	-	-
Appeals Received		
Winnipeg	-	5
Brandon	-	-
Thompson	-	-
TOTAL	-	5
Decision Confirmed	-	4
Decision Varied	-	-
Decision Rescinded	-	-
Appeal Withdrawn/Rejected	-	-
ACTIVE	-	1
TENANCY AGREEMENTS		
Carried forward from previous year	1	-
Appeals Received		
Winnipeg	3	2
Brandon	-	-
Thompson	-	-
TOTAL	4	2
Decision Confirmed	1	2
Decision Varied	-	-
Decision Rescinded	1	-
Appeal Withdrawn/Rejected	2	-
ACTIVE	-	-

TABLE 1

APPEALS

STATISTICAL SUMMARY FOR MANITOBA

PARTS 1 - 8 OF THE RESIDENTIAL TENANCIES ACT

	JANUARY 1, 1998 - DECEMBER 31, 1998 (Files)	JANUARY 1, 1999 - DECEMBER 31, 1999 (Files)
NOTICE		
Carried forward from previous year	1	-
Appeals Received		
Winnipeg	-	7
Brandon	-	1
Thompson	-	-
TOTAL	1	8
Decision Confirmed	1	5
Decision Varied	-	1
Decision Rescinded	-	1
Appeal Withdrawn/Rejected	-	-
ACTIVE	-	1
ORDERS OF POSSESSION		
Carried forward from previous year	8	3
Appeals Received		
Winnipeg	66	77
Brandon	2	-
Thompson	-	2
TOTAL	76	82
Decision Confirmed	41	40
Decision Varied	13	9
Decision Rescinded	10	5
Appeal Withdrawn/Rejected	9	12
ACTIVE	3	16

TABLE 1

APPEALS

STATISTICAL SUMMARY FOR MANITOBA

PARTS 1 - 8 OF THE RESIDENTIAL TENANCIES ACT

	JANUARY 1, 1998 – DECEMBER 31, 1998 (Files)	JANUARY 1, 1999 - DECEMBER 31, 1999 (Files)
FAILURE OF LANDLORD/TENANT TO MEET OBLIGATIONS*		
Carried forward from previous year	19	17
Appeals Received		
Winnipeg	59	62
Brandon	8	4
Thompson	1	2
TOTAL	87	85
Decision Confirmed	30	26
Decision Varied	29	21
Decision Rescinded	2	11
Appeal Withdrawn/Rejected	9	6
ACTIVE	17	21
OTHER DISPUTES **		
Carried forward from previous year	-	-
Appeals Received		
Winnipeg	-	1
Brandon	-	-
Thompson	-	-
TOTAL	-	1
Decision Confirmed	-	-
Decision Varied	-	1
Decision Rescinded	-	-
Appeal Withdrawn/Rejected	-	-
ACTIVE	-	-

* Includes disputes over locks and doors, privacy, seizure of tenant's property, non-payment of rent, disturbance, withholding of services, unauthorized charges or fees.

** Includes disputes over assignment and subletting, mobile homes, abandonment of premises, entitlement to collect rent and change of landlord.

TABLE 1

APPEALS

STATISTICAL SUMMARY FOR MANITOBA

PARTS 1 - 8 OF THE RESIDENTIAL TENANCIES ACT

	JANUARY 1, 1998 – DECEMBER 31, 1998 (Files)	JANUARY 1, 1999 - DECEMBER 31, 1999 (Files)
TOTAL APPEALS		
Carried forward from previous year	73	97
Appeals Received		
Winnipeg	353	370
Brandon	22	18
Thompson	10	11
TOTAL	458	496
Decision Confirmed	161	187
Decision Varied	133	131
Decision Rescinded	25	35
Appeal Withdrawn/Rejected	42	36
ACTIVE	97	107

APPEAL ACTIVITY SUMMARY

PART 9 OF THE RESIDENTIAL TENANCIES ACT

In 1999, appeals on 1,158 rental units were received at the Commission under Part 9 of The Residential Tenancies Act. Of these 1,158 appeals, 920 were received to orders issued on applications for rent increases above the guideline.

The Commission processed appeals on orders affecting 1,190 rental units in the 1999 calendar year. A total of 483 of these orders were upheld, 541 orders of the Branch were varied by the appeal decision, and 166 were either rejected by the Commission or withdrawn by the appellant. Most rejections are caused by late appeals.

TABLE 2

APPEALS

STATISTICAL SUMMARY FOR MANITOBA

PART 9 OF THE RESIDENTIAL TENANCIES ACT

	JANUARY 1, 1998 – DECEMBER 31, 1998		JANUARY 1, 1999 – DECEMBER 31, 1999	
	BLDGS.	UNITS	BLDGS.	UNITS
APPLICATION FOR RENT INCREASES ABOVE GUIDELINE				
Carried forward from previous year	5	88	8	29
Appeals Received				
Winnipeg	21	227	40	898
Brandon	2	121	1	22
Thompson	-	-	-	-
TOTAL	28	436	49	949
Decision Confirmed	4	7	13	475
Decision Varied	3	120	10	299
Decision Rescinded	-	-	-	-
Appeal Withdrawn/Rejected	13	280	20	161
ACTIVE	8	29	6	14
COMPLIANCE				
Carried forward from previous year	1	35	-	-
Appeals Received				
Winnipeg	1	1	11	212
Brandon	2	22	-	-
Thompson	-	-	-	-
TOTAL	4	58	11	212
Decision Confirmed	2	22	2	7
Decision Varied	1	35	2	197
Decision Rescinded	-	-	-	-
Appeal Withdrawn/Rejected	1	1	2	2
ACTIVE	-	-	5	6

TABLE 2

APPEALS

STATISTICAL SUMMARY FOR MANITOBA

PART 9 OF THE RESIDENTIAL TENANCIES ACT

	JANUARY 1, 1998 – DECEMBER 31, 1998		JANUARY 1, 1999 – DECEMBER 31, 1999	
	BLDGS.	UNITS	BLDGS.	UNITS
APPLICATION - REHABILITATION				
Carried forward from previous year	-	-	-	-
Appeals Received				
Winnipeg	1	1	-	-
Brandon	-	-	-	-
Thompson	-	-	-	-
TOTAL	1	1	-	-
Decision Confirmed	-	-	-	-
Decision Varied	-	-	-	-
Decision Rescinded	-	-	-	-
Appeal Withdrawn/Rejected	1	1	-	-
ACTIVE	-	-	-	-
APPLICATION - WITHDRAWAL OF SERVICE				
Carried forward from previous year	1	3	1	22
Appeals Received				
Winnipeg	-	-	2	23
Brandon	1	22	-	-
Thompson	-	-	-	-
TOTAL	2	25	3	45
Decision Confirmed	-	-	-	-
Decision Varied	1	3	3	45
Decision Rescinded	-	-	-	-
Appeal Withdrawn/Rejected	-	-	-	-
ACTIVE	1	22	-	-

TABLE 2

APPEALS

STATISTICAL SUMMARY FOR MANITOBA

PART 9 OF THE RESIDENTIAL TENANCIES ACT

	JANUARY 1, 1998 – DECEMBER 31, 1998		JANUARY 1, 1999 – DECEMBER 31, 1999	
	BLDGS.	UNITS	BLDGS.	UNITS
APPLICATION - TENANT REQUESTED IMPROVEMENTS				
Carried forward from previous year	-	-	1	1
Appeals Received				
Winnipeg	1	1	1	1
Brandon	-	-	-	-
Thompson	-	-	-	-
TOTAL	1	1	2	2
Decision Confirmed	-	-	1	1
Decision Varied	-	-	-	-
Decision Rescinded	-	-	-	-
Appeal Withdrawn/Rejected	-	-	1	1
ACTIVE	1	1	-	-
APPLICATION – LAUNDRY INCREASES				
Carried forward from previous year	1	19	-	-
Appeals Received				
Winnipeg	-	-	1	1
Brandon	-	-	-	-
Thompson	-	-	-	-
TOTAL	1	19	1	1
Decision Confirmed	1	19	-	-
Decision Varied	-	-	-	-
Decision Rescinded	-	-	-	-
Appeal Withdrawn/Rejected	-	-	1	1
ACTIVE	-	-	-	-

TABLE 2

APPEALS

STATISTICAL SUMMARY FOR MANITOBA

PART 9 OF THE RESIDENTIAL TENANCIES ACT

	JANUARY 1, 1998 – DECEMBER 31, 1998		JANUARY 1, 1999 – DECEMBER 31, 1999	
	BLDGS.	UNITS	BLDGS.	UNITS
APPLICATION - LAUNDRY TRANSFER TO THIRD PARTY				
Carried forward from previous year	-	-	-	-
Appeals Received				
Winnipeg	-	-	1	1
Brandon	-	-	-	-
Thompson	-	-	-	-
TOTAL	-	-	1	1
Decision Confirmed	-	-	-	-
Decision Varied	-	-	-	-
Decision Rescinded	-	-	-	-
Appeal Withdrawn/Rejected	-	-	1	1
ACTIVE	-	-	-	-
TOTAL APPEALS				
Carried forward from previous year	8	145	10	52
Appeals Received				
Winnipeg	24	230	56	1,136
Brandon	5	165	1	22
Thompson	-	-	-	-
TOTAL	37	540	67	1,210
Decision Confirmed	7	48	16	483
Decision Varied	5	158	15	541
Decision Rescinded	-	-	-	-
Appeal Withdrawn/Rejected	15	282	25	166
ACTIVE	10	52	11	20

TABLE 3

APPEAL HEARINGS

RESIDENTIAL TENANCIES COMMISSION

	JANUARY 1, 1998– DECEMBER 31, 1998	JANUARY 1, 1999 – DECEMBER 31, 1999
Winnipeg	323	369
Beausejour	1	2
Brandon	11	17
Carman	-	1
Dauphin	1	1
Flin Flon	1	-
Minnedosa	1	-
Morden	3	1
Neepawa	1	-
Portage la Prairie	2	4
Russell	2	-
Selkirk	6	6
Steinbach	2	2
Swan River	-	-
The Pas	1	4
Thompson	8	4
TOTAL	363	411

TABLE 4

APPLICATIONS FOR LEAVE TO APPEAL

	January 1, 1998 – December 31, 1998	January 1, 1999 – December 31, 1999
Granted	1	3
Struck from List	1	-
Denied	11	19
Abandoned	1	-
Withdrawn	1	3
Granted by consent of all parties	-	1
Discontinued	3	-
Pending	-	1
Reserved	-	1
Adjourned Sine Die	1	1
TOTAL	19	29

SIGNIFICANT DECISIONS

1. **Significant Decisions**

The Residential Tenancies Branch received an application under Part 9 of the Residential Tenancies Act requesting rent increases ranging from 1% to 20% per month with respect to 376 rental units. The Residential Tenancies Branch allowed the landlord a maximum increase of 1.2%. The landlord and four tenants appealed the orders of the Branch.

Prior to June 12, 1998, the residential apartment complex was owned by a corporation whose shareholders were the three levels of government. The complex was exempt from rent regulation under Part 9 of The Residential Tenancies Act because the rental units were owned and administered by or for governments or agencies of government. On or about June 12, 1998, all shares were sold and the residential complex no longer qualified for exempt status.

Five questions were raised on behalf of the landlord in the appeal hearing:

I. Is the landlord's appeal to be determined under Part 9 of the Act?

Counsel for the landlord said that the appeal brings into issue the interpretation of The Residential Tenancies Act and Regulations as they apply to residential complexes which change over from exempt status under Part 9 of the Act and become subject to rent regulation. He submitted that the Act is silent on the determination of rent at the end of a period of exemption and the main issue becomes how to implement a rent increase for the first period following the period of exemption from rent regulation. He suggested the application did not fall only under Part 9 of the Act, but it also involved other parts of the Act, such as Section 27, which deals with notice provisions involving rental units which are not subject

to rent regulation. He concluded that the landlord's application and appeal raised issues of policy and interpretation of legislation which go beyond Part 9 of the Act.

A representative from the Residential Tenancies Branch pointed out that the landlord's application for a rent increase was made pursuant to Section 123 of Part 9 of the Act; that the decision of the Residential Tenancies Branch was made pursuant to Section 125 of Part 9 of the Act; and that the landlord's appeal was also under Part 9 of the Act.

The Commission felt that the landlord's application deals with a rent increase and the residential complex in question was not exempt under any of the exceptions set out in Section 116(1) of the Act. They felt the issues were applications of Part 9 of the Act and the Regulations. The fact that Section 27 of the Act also applies to exempt rental units does not in itself cause this matter to fall outside of Part 9. Therefore, they saw no valid reason to exclude this matter from Part 9 of the Act and they found that the landlord's application and appeal are squarely under Part 9 of the Act.

II. Can the landlord raise the rent to "market level" after a period of exemption from rent regulation has ended?

Counsel for the landlord explained "market rents" as rents which a landlord may charge the tenants based on business decisions and not determined by rent regulations. He argued that the landlord has the ability to institute "market rents" for the period following rent regulation, by complying with the notice provisions in Section 27 of the Act. He submitted that the landlord is entitled to give the tenants at least 3 months' advance notice of a rent increase to "market rents",

during a "transition period", provided the other requirements of Section 27 were met. He also argued that the landlord is subject to rent regulations only following increases to "market rents."

The Residential Tenancies Branch representative submitted that there is no "transition period" and that Section 27 of the Act sets out notice provisions of rent increases that also apply to rental units which are not subject to rent regulation under Part 9.

The Commission agreed with the Residential Tenancies Branch interpretation of Section 27 of the Act. A rental unit is either in a period of exemption or it is in a period during which it is subject to rent regulations. The Act does not contemplate any other period. The Commission panel found that the landlord cannot raise the rents to "market level" after a period of exemption from rent regulation has ended.

III. Is the rent increase that can be charged by the landlord following the period of exemption to be calculated in the manner shown in the Residential Tenancies Branch example in a letter from the Branch dated October 16, 1998?

Counsel for the landlord stated that while the landlord was exempt from rent regulation it was not obliged to provide rental agreements or rent discounts. He argued that Section 1(2) of Regulation 156/92 does not apply to the landlord during the period of exemption from rent regulation. He pointed out that the letter from the Residential Tenancies Branch gave an example of a rent calculation at the end of a period of exemption, using Section 1(3) of the Regulation, but that there was no requirement for rent discounts to be contained in tenancy agreements when the landlord was exempt from rent regulation.

The Commission reviewed the correspondence from the Residential Tenancies Branch. They found that part of the letter provides an example of calculating annual guideline rent increases. The letter also stated "as outlined in Regulation 1 (2) of The Residential Tenancies Act, rent discounts must be provided for in a written tenancy agreement between the landlord and the tenant." The panel interpreted this statement to include all discounts, including prior discounts during an exempt period, or discounts within a period of rent regulation.

The panel concluded that the Act does not provide for cumulative rate increases not taken in previous years, except as allowed in Regulation 1(2). The notice provisions of Section 27 of the Act apply to rental units that are not subject to regulation and unless notice is given of a rent increase, even guideline increases cannot be recaptured at the start of a period of rent regulation.

The panel concluded that they were not bound to follow the example of how to calculate a rent increase following a period of exemption, set out in the letter from the Residential Tenancies Branch to the landlord. Based on the above conclusions, the panel found that the Rent Regulation Officer calculated the allowable rent increases properly and according to the Act and the Regulations.

IV. Should the Commission refer this matter to the Court of Appeal, pursuant to Section 174(1) of the Act, for the opinion of the Court of Appeal on a question of law or jurisdiction?

Counsel for the landlord made a motion to the appeal panel that the Residential Tenancies Commission state a case to the Court of Appeal on a question of law or jurisdiction. He argued that the issues were unique and unprecedented; that the arguments were not merely Part 9 arguments; and that the issues raised questions of interpretation of law.

The Commission panel denied the motion for several reasons. Firstly, none of the parties raised any arguments which cast doubt on the Commission's jurisdiction to hear the matter. The panel felt they had a duty to render a decision even though the issues appeared complex, difficult, unique or unprecedented. The panel found the issues were squarely within Part 9 of the Act and required application of sections of the Act and Regulations rather than complex legal interpretations of the Act.

V. Have the proceedings herein been tainted with bias or the perception of bias?

Counsel for the landlord suggested that because the Residential Tenancies Branch received a legal opinion from a lawyer in the Manitoba Justice Department relating to this case there could be bias or a perception of bias because the same Justice Department also provided legal opinions to the Residential Tenancies Commission, which hears appeals of decisions made by the Branch.

A lawyer with the Justice Department was present at this hearing. He stated that he did not give the Branch a legal opinion concerning this matter and he was not aware that the Branch had been provided with a legal opinion from the Justice Department. He also had not given the Commission a legal opinion on this matter.

The panel concluded that there was no actual bias and that any perception of bias was not warranted.

Four of the tenants raised issues relating to the reduction of services in the residential complex. They complained about the removal of security services and a life-line panic service. These items were not part of the application and the tenants

were advised that they could apply to the Residential Tenancies Branch for a determination.

The decisions of the Residential Tenancies Branch were upheld.

2. **Significant Decisions**

A landlord applied for an Order of Possession to the Residential Tenancies Branch because the property had been sold, the purchasers had given written notice to the vendor of their intention to move in, but the tenants would not vacate. The Residential Tenancies Branch granted the Order of Possession and ordered the tenants to move out. The tenants appealed the decision to the Residential Tenancies Commission.

The Residential Tenancies Commission heard that the landlord had acquired the property by way of a foreclosure proceeding. The tenants were the former owners of the property. The landlord agreed to allow the tenants to occupy the property after ownership was acquired. Initially, the continued occupancy was until the end of September 1998, but for various reasons, this period was extended. The tenants continued to occupy the premises.

A document, dated September 8, 1998, was signed by the tenants and contained the following phrase: "I would further confirm that the use and occupation is not to be construed in any way as a tenancy..." At the hearing, neither the tenants nor the landlord disputed the jurisdiction of the Residential Tenancies Commission to hear this matter. The panel found that there was a landlord-tenant relationship between the parties.

The landlord testified and provided evidence that on May 26, 1999, an offer to purchase was accepted and possession date was to be August 31, 1999. A witness testified that he was the real estate agent involved in the sale of the property and that the purchasers intended to occupy the premises. The purchasers gave the landlord written notice to give the occupants a Notice of Termination.

The landlord said he served the tenants with a Notice of Termination on June 29, 1999, by personally delivering a copy of the Notice to the tenants at their home. A copy of the Notice was submitted at the hearing.

The landlord testified that the purchasers had confirmed mortgage financing and that all conditions precedent in the sale agreement had been met and that it was a completed transaction. However, the tenants would not vacate.

The tenants testified that they had a fixed-term tenancy to October 31, 1999, or longer and were not required to vacate until that fixed-term tenancy was ended. They submitted a copy of a fax they said was sent to them by the landlord on May 19,1999 confirming the fixed-term tenancy.

The landlord denied that he or anyone in his office had sent this fax. He testified that the fax which he transmitted on May 19,1999 consisted of a cover page and a second page which was the original document the tenants had signed on September 8, 1998. He submitted the original fax transmission.

The tenants were unable to provide the original fax as proof that there was a fixed-tenancy agreement.

From the evidence provided, the panel found that the agreement between the landlord and the tenants was a month-to-month tenancy and that the landlord had complied with all of the requirements of Section 98 of the Act regarding termination on sale or for landlord's use. The landlord's application for an Order of Possession was granted.

3. **Significant Decisions**

Tenants filed a claim against their landlord for violation of privacy. Based on the information provided by both parties at the Residential Tenancies Branch hearing, the tenants' claim did not succeed. The tenants appealed the decision to the Residential Tenancies Commission.

The tenants had signed a tenancy agreement for the period July 1, 1997 to October 31, 1997 and had asked the landlord to do a number of repairs, including painting. The tenants moved into the suite on July 3, 1997. Without advising the caretaker or the landlord, the tenants went out of town from July 3 to July 14, 1997. The landlord, who had promised to get the painting and other repairs done "as soon as possible" after the July 1, 1997 lease had begun, could not have given 24-hours notice of the painting. It was the opinion of the panel that the landlord, in proceeding immediately with repairs, had the implied consent of the tenants.

When the tenants returned home, they found their possessions scattered about, paint supplies in the bathroom sink, and the suite was left unsecured with the sun porch window left open. Only when the tenants complained to the landlord was there a discussion about prior notice being required.

On July 24, 1997, the tenants saw the caretaker walking down the hall. The caretaker admitted to the tenants that he had tried but had failed to gain entry to the suite. He asked the tenants if they had changed the locks. The tenants said the locks had not been changed, but reiterated that 24-hours notice was required before any entry could be gained to their suite for repairs. After the incident, the landlord offered the tenants two weeks of free rent for the late move in and the clean-up the tenants did for the painters.

The tenants said that they initiated a claim of $50,000 in the Court of Queen's Bench on August 5, 1997 for a breach of The Privacy Act. The claim was denied by the landlord and subsequently dismissed by the Court of Queen's Bench on July 23, 1998 and by the Court of Appeal on February 4, 1999. The courts did not have the proper jurisdiction to deal with a dispute between a landlord and tenant.

At the Residential Tenancies Commission hearing, the tenants' claim for $2,500 for the cost of initially pursuing this claim as a breach of The Privacy Act in The Court of Queen's Bench and subsequently in The Manitoba Court of Appeal, was denied by the panel. The Commission had no jurisdiction to award the tenants costs for pursuing their claim in another court.

The tenants also claimed $5,000 for loss of privacy. For a claim to be successful, the claimant must show three things: that a loss took place, the amount of the loss, and that the other party was responsible for the loss. The tenants were asked if they had received any treatment or had suffered any problems after arriving home July 14, 1997 to find the porch window open. The tenants said no; however, they felt violated. No possessions were missing and the police were not called. The Commission made no award for violation of the tenants' privacy by the landlord. The Residential Tenancies Commission does not have jurisdiction in this regard.

At the hearing, there was some confusion about the rent records and what rebate the tenants had received from the landlord. The landlord explained that they had computer rent rolls for each building and that information had been incorrectly transferred from the individual ledger sheets to the computer sheets for this suite.

The panel awarded the tenants compensation equivalent to two weeks' rent or $211.50. According to the records, the tenants had already received compensation of $105.75, leaving a balance payable of $105.75. The tenants were also awarded costs of $10.58.

The tenants applied to the Court of Appeal for permission to appeal the Commission's decision. Decisions can be appealed but only on a question of error in law or jurisdiction. The Court of Appeal judge denied the application for leave to appeal.